

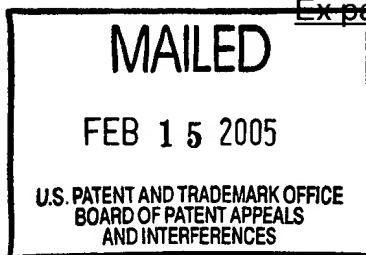
The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 37

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte EDWARD W. HOLLAND and MARIE L. ANDERSON



Appeal No. 2005-0281
Application No. 08/992,504

ON BRIEF

Before COHEN, NASE and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's rejection of claims 75-77, 81, 82 and 86-93. Claims 78-80, 83-85 and 94, the only other claims pending in this application, stand objected to as being dependent upon a rejected base claim.

We AFFIRM-IN-PART.

BACKGROUND

The appellants' invention relates to a support stand for supporting display items of a flat plane type in a vertical position (specification, page 1). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

The examiner relied upon the following prior art references in rejecting the appealed claims:¹

Dumben	1,780,872	Nov. 4, 1930
Hunter	4,966,340	Oct. 30, 1990

The following rejections are before us for review.

Claims 75-77, 81, 82, 86, 87, 92 and 93 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Dumben.

Claims 88, 90 and 91 stand rejected under 35 U.S.C. § 103 as being unpatentable over Dumben.

Claim 89 stands rejected under 35 U.S.C. § 103 as being unpatentable over Dumben in view of Hunter.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer

¹ The examiner's listing of the Helfman patent on page 3 of the answer as prior art relied upon appears to have been an inadvertent error, as that patent is not relied upon in any of the examiner's rejections.

(Paper No. 35) for the examiner's complete reasoning in support of the rejections and to the brief (Paper No. 34) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied Dumben and Hunter patents, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

Dumben discloses an adjustable book support comprising a supporting base 5 having a flat, planar top surface and provided with a longitudinal slot 8 communicating with a cut away portion 7 in the bottom of the base. In the top wall of the cut away portion 7 are formed longitudinal openings 13, 13' on opposite sides of the longitudinal slot 8. The openings 13, 13' are adapted to have their top wall lined with a strip of corrugated metal 14, 14'. A pair of adjusting screws 15 are adapted to be passed through each of sliding support members 12 into the corrugated openings for the purpose of holding the sliding support member 12 in an adjusted position. When raised into engagement with the series of corrugations, the screws 15 lock the sliding support member 12, and hence the book end support 17 and block 16 supported by the sliding support member 12, into position (page 2, lines 3 and 4). A block 16 is secured by screws to each sliding support member 12 for the purpose of supporting the book ends 17 and the bracing members 18 employed for bracing the book end supports 17.

Appellants argue that claim 75 is not anticipated by Dumben because Dumben's base 5 is "neither flat, nor planar." We disagree. The term "flat" is defined as "having a smooth, level surface" (Webster's New World Dictionary, Third College Edition (Simon & Schuster, Inc. 1988)). Inasmuch as Dumben's base 5 has a smooth and level upper surface, it is "flat." Dumben's base 5 is not in its entirety "planar" in the sense of "of or lying in one plane" (Id.), but neither would appellants' base plate 10, which is a three-dimensional object and thus cannot in its entirety lie in a single plane, meet such a definition of "planar." Thus, consistent with appellants' underlying disclosure, we interpret "planar" in claim 75 as "of or pertaining to a point on a surface at which the curvature is zero" (Id.). As there are an infinite number of points along the top surface of Dumben's base 5 at which the curvature is zero, Dumben's base 5 is "planar." Appellants' argument (brief, page 16) that Dumben's base lacks the ability to provide a "continuous ground engaging flat base which does not present a trip hazard to foot traffic" is not persuasive, as claim 75 does not include any such limitation. It is well established that limitations not appearing in the claims cannot be relied upon for patentability (In re Self, 671 F.2d 1344, 1348, 213 USPQ 1, 5 (CCPA 1982)).

As clearly illustrated in Figures 2 and 7 of Dumben, the end supports 17 are disposed on a top surface of the base 5 and are "slidably engaged with the top surface of the base." We find nothing in claim 75 which precludes any portion of the support members from extending into a slot in the base. While a downwardly extending

protrusion at the bottom of each of Dumben's end supports extends into the slot 8, each end support 17 has a substantial surface disposed on the top surface of the base 5 for sliding movement thereon.

As for the "securing apparatus" recited in claim 75, the ends of screws 15 are adapted to project through the opposite sides of the sliding supporting members 12 into the corrugated openings for the purpose of holding the sliding supporting members 12, and thus the end supports 17 secured to the sliding supporting members 12 by screws 18 through blocks 16 and the bracing members 18² secured to the blocks 16 and sliding support members 12 by screws 19 and to the end supports 17 by nails 20, in an adjusted position. Dumben also discloses that, when the screws 15 engage the corrugations, the screws 15, and thus the sliding supporting members 12, blocks 16, end supports 17 and bracing members 18, are locked into position (page 2, lines 3-4). Dumben's book rack is thus fully responsive to the "securing apparatus" limitation.

For the foregoing reasons, the arguments in appellants' brief fail to persuade us that the subject matter of claim 75 is not anticipated by Dumben. The examiner's rejection of claim 75, as well as claims 77 and 81 grouped therewith, is thus affirmed. We also affirm the rejections of claims 88, 90 and 91 as being unpatentable over

² We note that Dumben has used the reference numeral 18 to denote both the bracing member and the screws securing the sliding supporting members 12 to blocks 16 and end supports 17.

Dumben and claim 89 as being unpatentable over Dumben in view of Hunter, as appellants have elected to group these claims with claim 75.

The examiner's rejection of claim 76 as being anticipated by Dumben is reversed. Simply stated, the examiner's position that one of the end supports 17 is permanently affixed to the base is unreasonable. Both end supports are adjustably mounted on the base 5 as explained above.

We must also reverse the rejection of claims 92 and 93 as being anticipated by Dumben. Dumben lacks a second securing apparatus "for attaching the support member to an item placed against the planar holding face of the support member" as called for in claims 92 and 93. While the opposing end support 17 of Dumben can be used to support, even press, a book or other item against the other end support 17, this does not meet the limitation of **attaching**³ the support member to an item placed against the planar holding face of the support member.

With respect to claim 82, appellants argue that Dumben's blocks 16 are slidably mounted within a longitudinal slot 8 in the base and thus are not a second leg of the bracket [support member] and do not have a face that is "slidably engaged with a top surface of the base." Be that as it may, Dumben's end support 17 is a first leg extending substantially perpendicular to the base 5 and bracing member 18 is a second

³ The term "attach" is defined as "to fasten by sticking, typing, etc." (Webster's New World Dictionary, Third College Edition (Simon & Schuster, Inc. 1988)).

leg which has a face slidably engaged with the top surface of the base 5, thereby meeting the language of claim 82 at issue. The examiner's rejection of claim 82 as being anticipated by Dumben is therefore affirmed.

With respect to claim 86, the bottom surfaces of the four legs 6 of the base 5 are in contact with the ground or floor to thereby prevent the book rack or support from tipping over. The rejection of claim 86, as well as claim 87 which appellants have grouped therewith, as being anticipated by Dumben is thus affirmed.

CONCLUSION

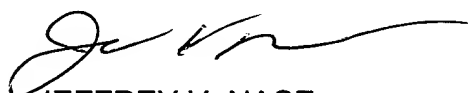
To summarize, the decision of the examiner to reject claims 75-77, 81, 82 and 86-93 is affirmed with respect to claims 75, 77, 81, 82 and 86-91 and reversed as to claims 76, 92 and 93.

No time period for taking any subsequent action in connection with this appeal
may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART



IRWIN CHARLES COHEN
Administrative Patent Judge



JEFFREY V. NASE
Administrative Patent Judge



JENNIFER D. BAHR
Administrative Patent Judge

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